

COMMONWEALTH OF KENTUCKY  
EXECUTIVE BRANCH ETHICS COMMISSION  
CASE NO. 18-005

EXECUTIVE BRANCH ETHICS  
COMMISSION

COMPLAINANT

v.

RODNEY COFFEY

RESPONDENT

**FINDINGS OF FACT, CONCLUSIONS OF LAW.**  
**FINAL ORDER**  
**AND NOTICE OF APPEAL RIGHTS**

The Executive Branch Ethics Commission (“Commission”), having considered the record, including the full transcript of the hearing, the exhibits, the parties written closings and responses, the recommended order and exceptions duly filed to the recommended order, hereby issues its findings of fact, conclusions of law, and notice of appeal rights.

**PROCEDURAL HISTORY**

1. The Executive Branch Ethics Commission issued an Initiating Order against Rodney Coffey (“Coffey”) on January 16, 2018. In Counts I through III of the Initiating Order, the commission alleged that Coffey:

“...during his course of employment as Colonel, Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, violated KRS 11A.020(1)(a), (b), and (d), and KRS 11A.020(2) by having used or attempted to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest, used or attempted to use any means to influence a public agency in derogation of the state at large, used or attempted to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest, and failed to avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or

private interest. Specifically, that Coffey interfered with a conservation officer's investigation of a Department of Fish and Wildlife Resources District Commission Member by prohibiting the officer from referring the matter to the appropriate prosecutorial entity. This was outside the established processes of government. Further, that Coffey interfered with the merit hiring process by instructing a Department of Fish and Wildlife Resources employee to rescind disqualification notices that were sent to twenty-two (22) applicants to "repay a favor." Finally, that Coffey interfered with the merit hiring process by instructing a Department of Fish and Wildlife Resources employee to re-interview an application who had already been recommended as "do not hire." This was outside the established processes of government.

2. Complainant requested the Hearing Officer recommend to the Commission that it find Respondent violated KRS 11A.020(1)(a), (b), and (d), and KRS 11A.020(2); issue to Respondent a written, public reprimand for violation of the law and provide a copy of the reprimand to the Secretary of the Tourism, Arts and Heritage Cabinet, the former appointing authority of Coffey; and order Respondent to pay to the Commission a civil penalty of \$15,000.00 for Counts I through III alleged in the Initiating Order.

3. On February 6, 2018, Coffey filed his *Response to Initiating Order* denying the allegations against him. He requested the Hearing Officer dismiss the Initiating Order.

4. On or about January 17, 2019, Respondent filed a *Motion to Dismiss Count I of the Initiating Order*, requesting a denial of Respondent's *Motion to Dismiss*.

5. On February 14, 2019, Complainant filed its *Response to Motion to Dismiss Count I of the Initiating Order*, requesting a denial of Respondent's *Motion to Dismiss*.

6. In the *Order* of March 22, 2019, the Hearing Officer denied the *Motion to Dismiss Count I of the Initiating Order*.

7. In accordance with KRS Chapter 13B an Administrative Hearing was held in this matter on June 3, 5, and 6, 2019. The Complainant, the Kentucky Executive Branch Ethics Commission, was present and represented by the Hon. Michael W. Board, the Hon.

Meena Mohanty, and the Hon. Kathryn H. Gabhart-Executive Director. The Respondent, Rodney Coffey, was present and represented by the Hon. Steven G. Bolton. The Hon. E. Patrick Moores presided over the hearing as the Hearing Officer.

The following witnesses testified on the first day of the hearing:

**Joshua Robinson:** For the past seven (7) years Mr. Robinson has been employed as a Conservation Officer (“CO”) in District 6 by the Kentucky Department of Fish and Wildlife Resources (“KDFWR”) Enforcement Division.

**Misty Dugger Judy:** Ms. Judy is currently employed by the Kentucky Tourism, Arts and Heritage Cabinet as its Executive Director of Human Resources. She had originally been hired by the Cabinet in August of 2017 but reverted to her current title March 15, 2019. From August 2018 to March 2019, she had been on special detail to the Deputy Commissioner position of the KDFWR.

**Joseph Shane Carrier:** Mr. Carrier has been employed for six (6) years by the KDFWR, Enforcement Division, holding the rank of Major.

**Rachel Bertucci:** Ms. Bertucci is currently a Purchasing Agent I for the KDFWR. She has been in this position for two years. Prior to this position, she worked for the KDFWR as an Administrative Specialist III for approximately ten years. She was assigned to assist the Colonel of the Law Enforcement Division. Her work included overseeing the hiring process for new conservation officers.

**Rachel Conyers:** Ms. Conyers is an Administrative Specialist III with the KDFWR. She replaced Ms. Bertucci when Ms. Bertucci became a Purchasing Agent. Mr. Conyers' duties also include overseeing the hiring process for new conservation officers.

The following witnesses testified on the second day of hearing:

**David Marques:** Mr. Marques is a Lieutenant with the KDFWR. He works with the KDFWR training academy and is responsible for scheduling in-service training and overseeing the twelve week KDFWR training academy. He was historically involved in the hiring process for new conservation officers and remains so to a limited extent.

**Shane Carrier:** Mr. Carrier has been employed for six (6) years by the KDFWR, Enforcement Division, holding the rank of Major.

**Barry McCoy:** Mr. McCoy is a conservation officer with the KDFWR. He has been an officer for thirteen years and is assigned to the 8<sup>th</sup> District which covers fourteen counties. Montgomery County is his home county. Mr. McCoy helped conduct background checks for conservation officer recruits during 2017.

**William E. ("Buddy") Grayson:** Mr. Grayson is currently the chief deputy for the Carter County Sheriff's Office. Previously, he was a Captain with the KDFWR for three years after serving as a conservation officer for twenty-three years. Mr. Grayson was the Captain of the 8<sup>th</sup> District and served as Mr. McCoy's captain and ultimately approved of Mr. McCoy's work on the 2017 background investigations.

**Charles Bush:** Mr. Bush is currently retired, but previously worked for the KDFWR as a Deputy Commissioner. As Deputy Commissioner, Mr. Bush oversaw the law enforcement, administrative services, and engineering divisions.

**Elizabeth Coffey:** Ms. Coffey is Rodney Coffey's wife.

The following witnesses testified on the third day of hearing:

**Rodney Coffey:** Mr. Coffey is the Respondent and former Colonel over the law enforcement division of the KDFWR.

**Steven Glenn:** Mr. Glenn is retired from the construction business. He also served as a KDFWR district commission member representing the 6<sup>th</sup> District.

**Bradley J. McCoy:** Mr. McCoy is the Chief of Police for the Nelson County School District. Previously he worked for the KDFWR. He holds the rank of Major and has held that rank for twenty-four (24) years.

9. The parties timely submitted their Closing Statements and responses.
10. The Hearing Officer timely filed his Findings of Fact, Conclusions of Law, and Recommended Order.
11. The Complainant timely filed exceptions to the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order.
12. Complainant has the burden of establishing by clear and convincing evidence that the Respondent, as alleged in **Counts I through III** of the *Initiating Order*, during his course of employment as Colonel, Department of Fish and Wildlife Resources, tourism, Arts and Heritage Cabinet, violated KRS 11A.020(1)(a)(b), and (d), and KRS

11A.020(2) by having used or attempted to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest, used or attempted to use any means to influence a public agency in derogation of the state at large, used or attempted to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest, and failed to avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

### **FINDINGS OF FACT**

1. Coffey was employed as the Colonel of the law enforcement division by the Kentucky Department of Fish and Wildlife Resources (“KDFWR”) during the events described herein.

2. At all relevant times Coffey was a “public servant” as defined in KRS 11A.010(9)(h), and thus subject to the jurisdiction of the Commission.

### **FACTS PERTAINING TO COUNT I**

3. On December 24, 2016, KDFWR Commission Chairman, Jimmy Bevins (HR Day 1, p. 28, lines 19-24), sent Captain Richard Skaggs a text message requesting that Officer Josh Robinson be sent to the campground across Elkhorn Creek from Mr. Bevins’ personal residence and property to deal with some hunters. (Exhibit C1; HR Day 1, p. 34, lines 5-25; HR Day 1, p. 35, line 1). He also informed Captain Skaggs he planned to “throw some corn out.” (Exhibit C1; HR Day 1, p. 34, lines 5-25; HR Day 1, p. 35, line 1).

4. Captain Skaggs forwarded Mr. Bevins’ message to Sgt. Phillip Crane and included his own message requesting that Sgt. Crane inform Officer Robinson of the situation. (Exhibit C1; HR Day 1, p. 35, lines 2-18). Sgt. Crane forwarded both messages

he received from Captain Skaggs to Officer Robinson. Sgt. Crane and Robinson then continued a text message conversation regarding the author of the original message and that author's intent. (Exhibit C1; HR Day 1, pp. 35-36).

5. Officer Robinson had previously encountered Mr. Bevins in the summer of 2016 at an event in northern Kentucky. (HR Day 1, pp. 32-33). During this encounter, Mr. Bevins mentioned to Officer Robinson that he was having problems with hunters in a creek behind his house and that he planned to throw corn out to stop the hunting. (HR day 1, pp. 32-33). At first, Officer Robinson believed Mr. Bevins was joking. When Officer Robinson realized Mr. Bevins was not joking he advised that Mr. Bevins should simply call Officer Robinson and allow him to deal with any issues. (HR Day 1, pp. 32-33).

6. Officer Robinson did not go the campground on December 24, 2016. (HR Day 1, p. 40, lines 1-4). On the morning of January 8, 2017, Captain Skaggs dispatched Officer Robinson to the campground area. (HR Day 1, p. 40, lines 5-15). Upon his arrival at the campground, Officer Robinson made contact with three duck hunters on the campground side of Elkhorn Creek. (Exhibit C2). Officer Robinson performed a compliance check with the hunters, determined they had permission to hunt on the property, informed the hunters that the area was baited and could not be hunted, and then left the campground. (HR Day 1, p.40-41; HR Day 1, p. 43, lines 9-18).

7. A short time later, either Captain Skaggs or Sgt. Crane contacted Officer Robinson and directed him to meet Captain Skaggs back at the scene. (HR Day 1, p. 43, lines 19-23). Upon arriving back at the scene, Officer Robinson located Captain Skaggs on an island in the middle of Elkhorn Creek. (Exhibits C2 and C5; HR Day 1, p. 43, lines 24-

25 through p. 44, lines 1-4). Corn was visible from the middle of the creek on January 8, 2017. (HR Day 1, p. 45. Lines 8-11).

8. Captain Skaggs notified Major Shane Carrier of Officer Robinson's investigation while Major Carrier was preparing for a conference in Louisville, Kentucky. (HR Day 1, p. 227-228).

9. Major Carrier notified Colonel Coffey of the investigation into Mr. Bevins immediately after he was informed and had multiple follow up conversations with Colonel Coffey about this matter. (HR Day 1, p. 227, lines 10-25; HR Day 1, p. 228, lines 1-15; HR Day 1, p. 229, lines 16-20).

10. Captain Skaggs contacted KDFWR Colonel Rodney Coffey while Colonel Coffey was on vacation in Florida. (Exhibit C6; HR Day 2, p. 184, lines 18-25; HR Day 2, p. 185, lines 1-2). Captain Skaggs informed Colonel Coffey that Officer Robinson would be reaching out to the United States Fish and Wildlife Services ("USFWS") about the investigation of Mr. Bevins. (Exhibit C6; HR Day 2, p. 185, lines 15-25). Colonel Coffey instructed Captain Skaggs to "keep everything quiet and monitor the case." (Exhibit C6, HR Day 2, p. 186, lines 2-4).

11. On January 24, 2017, Officer Robinson, former Officer Bill Spears [now a State Trooper], and Captain Skaggs met with USFWS Agents Jesse Fielder and John Barham in Louisville, Kentucky. (HR Day 1, p. 58, lines 20-25 through p. 59, lines 1-25). Knowing that the USFWS heavily regulates waterfowl, Officer Robinson took the case to USFWS to see if it was a potential violation of federal laws. (HR Day 1, p. 59, lines 2-17). After the meeting, the USFWS agents presented the matter to the Assistant United States



Attorney who declined to accept it because the facts did not implicate the federal statute. (HR Day 1, p. 60, lines 1-9).

12. Between January 24, 2017, and February 2, 2017, the USFWS agents met with Colonel Coffey and Major Shane Carrier in Frankfort, Kentucky. (HR Day 1, p. 90, lines 2-4; HR Day 3, p. 69, lines 16-17). During this meeting, the USFWS agents informed Colonel Coffey and Major Carrier that USFWS was not going to seek federal charges against Mr. Bevins in this matter.

13. After learning that USFWS were not pursuing federal charges, Colonel Coffey decided to handle the case at headquarters and not allow Officer Robinson to continue working the case. (Exhibit C6; HR Day 2, p. 191, lines 2-7). Colonel Coffey “made it very clear...that we were taking care of it...at headquarters, that we were pulling it out of the district...” (Exhibit C6; HR Day 2, p. 193, lines 6-9). When referring to the case being pulled out of the district by headquarters and handled by headquarters, Colonel Coffey was referring to himself. (Exhibit C6; HR Day 2, p. 197, lines 5-11).

14. Colonel Coffey decided not to move forward with any further investigation of Mr. Bevins, or with the presentation of the case to the Franklin County prosecutor.

15. Colonel Coffey testified he considered several factors when making this decision. One reason is that he was concerned that the case was weak, and that potentially no violation of Kentucky law occurred. (HR Day 3, p. 70, lines 6-11).

16. The allegations assert that Colonel Coffey may have also based his decision, at least in part, on two other reasons. First, Major Carrier’s testimony suggests that Colonel Coffey may have been disinclined to pursue an investigation or charges against Commissioner Bevins because doing so would make it difficult for the Law Enforcement

Division command staff to get the increased personnel and pay raises they were seeking. (HR Day 1, p. 230, lines 10-25, HR Day 1 p. 231, lines 1-25; HR day 1, p. 232, lines 1-6).

17. Colonel Coffey also admits that he was concerned that if the case were prosecuted, Officer Robinson and Captain Skaggs would end up having to testify against each other, as Captain Skaggs had previously told Commissioner Bevins that he could feed wildlife, at least on his curtilage, and would not violate any law in doing so. He said that this would make the Department look foolish. (HR Day 3, p. 70, lines 17-25).

### **FACTS PERTAINING TO COUNT II AND III**

18. In February 2017, the KDFWR law enforcement division started the merit hiring process for class 21. (Exhibit C7; HR Day 1, p. 268, lines 20-25). When the hiring process begins a draft timeline is created that includes some “hard” dates and some flexible dates. (Exhibit C7; HR Day 1, p. 268, lines 14-19; HR Day 1, p. 269, lines 23-25; HR Day 1, p. 270, lines 1-20). The hiring process begins with the positions being posted online so applicants can apply. (HR Day 1, p. 272, lines 3-6).

19. KDFWR is not allowed to post more positions than they have openings available. (HR Day 1, p. 273, lines 1-20). As the hiring process progresses, applicants are being eliminated from consideration until the KDFWR makes the final decision on which applicants will fill the number of advertised positions. (HR day 1, p. 273, lines 21-24).

20. As applicants are eliminated, they receive what is referred to as a “sorry letter” from the KDFWR ending the process for that applicant. (HR Day 1, p. 273. Line 25; HR Day 1, p. 274, lines 1-22). When an applicant makes it through the hiring process and is selected for a position with the KDFWR law enforcement division, they are notified and offered the job. (HR Day 1, p. 276, lines 7-18). If the individual accepts the job, they

are hired as KDFWR employees prior to attending either the KDFWR academy or the academy at the Department of Criminal Justice Training (“DOCJT”), in Richmond, Kentucky. (HR Day 1, p. 276, lines 19-25; HR Day 1, p. 277, lines 1-21).

21. Throughout the hiring process for class 21, agency staff had a difficult time reaching Colonel Coffey. (HR Day 1, p. 289, lines 23-25; HR Day 1, p. 290, lines 1-7). Colonel Coffey did not respond to email requests concerning twenty-two (22) applicants who were recommended by the interview panel to be eliminated from the hiring process following the oral interviews. (Exhibit C8; HR Day 1, pp. 290-294).

22. Because the timeline for the hiring process includes some “hard” dates due to the coordination with outside agencies, Major Carrier made the decision to follow the oral interview recommendations and eliminate the twenty-two (22) applicants. (Exhibit C8; HR Day 1, p. 294, lines 17-25).

23. The KDFWR Commission member for the third district, Rusty Gailor, called Colonel Coffey after an applicant Mr. Gailor “had put in a good word for” received a sorry letter. (HR Day 3, p. 121, lines 23-25; HR Day 3, p. 122, lines 1-4). After learning of the applicants’ elimination from the process, Colonel Coffey requested a list of the names of those who were eliminated. (HR Day 1, p. 295, lines 1-14). After reviewing the list of names, Colonel Coffey instructed Ms. Rachel Conyers that all twenty-two (22) eliminated applicants be instructed to disregard the elimination email and to stand by for further instruction. (Exhibit C8; HR Day 1, p. 297, lines 16-25; HR Day 1, p. 298, lines 1-4).

24. Ultimately, Colonel Coffey unilaterally decided that fourteen (14) of the twenty-two (22) eliminated applicants would move forward. (Exhibit C8; Exhibit C9; HR Day 1, p. 298, lines 7-19; HR Day 1, p. 300, lines 1-23).

25. During Colonel Coffey's decision-making process, he sat in his office with Ms. Conyers and instructed her which of the twenty-two (22) applicants would be re-inserted back into the hiring process. (HR Day 1, p. 301, lines 7-14). While making his decisions, Colonel Coffey allegedly told Ms. Conyers that he "owed someone something." (HR Day 1, p. 301, lines 15-19). Colonel Coffey denies this allegation. (HR Day 3, p. 63 line 20 – p. 64, line 7).

26. One of the latter steps in the hiring process for the KDFWR law enforcement division is a background investigation. (Exhibit C7). Typically, background investigators are given approximately thirty (30) days to conduct a background investigation, and the command staff relies heavily on the opinion of the investigators. (HR Day 2, p. 74, lines 1-19). The background investigators make a recommendation at the end of their investigation regarding whether or not the applicant should move forward. (HR Day 2, p. 74, lines 21-25).

27. Once the investigators have completed their work, their recommendation is passed through the district chain of command for review, agreement/disagreement, and approval, before being forwarded to the command staff. (HR Day 2, p. 75, lines 1-11). Once the command staff receives the information, they separate the applicants into two stacks; those that are recommended and those that are not. (HR Day 2, p. 75, lines 11-13).

28. Officer Barry McCoy and Officer William Earlywine worked to complete the background investigation of applicant Drew Swartz. (Exhibit C11; HR Day 2, p. 132,

lines 23-25; HR Day 2, p. 133, lines 1-9). Their recommendation was that Mr. Swartz not be hired. (Exhibit C11; HR Day 2, p. 139, lines 24-25; HR Day 2, p. 140, Lines 1-18). Officers McCoy and Earlywine based their recommendation on Mr. Swartz's desire to attend a family barbeque rather than complete the required interview. After that Mr. Swartz continued to be difficult to schedule. Captain William "Buddy" Grayson followed the recommendation of Officers McCoy and Earlywine when he sent the final investigation recommendation to the command staff at headquarters. (Exhibit C11; HR Day 2, p. 155, lines 2-22).

29. Colonel Coffey had Officer McCoy re-do the background investigation for Mr. Swartz because Colonel Coffey stated that he had known Mr. Swartz his whole life and thought he would make a good officer. (HR Day 2, p. 157, lines 1-16; HR Day 2, p. 170, lines 18-25; HR Day 3, p. 125, lines 18-22) Mr. Swartz was interviewed.

### **CONCLUSIONS OF LAW**

1. The Executive Branch Ethics Commission is a duly organized agency of state government, vested with the responsibility under KRS 11A.080 of investigating complaints that may be brought to the Commission's attention as to potential unethical conduct by any public servant who works in the Executive Branch.

2. The Executive Branch Ethics Commission issued an Initiating Order against Coffey on January 16, 2018. In Counts I through III of the Initiating Order, the Commission alleged that Coffey:

"...during his course of employment as Colonel, Department of Fish and Wildlife Resources, Tourism, Arts and Heritage Cabinet, violated KRS 11A.020(1)(a), (b), and (d), and KRS 11A.020(2) by having used or attempted to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest, used or attempted to use any means to influence a public agency in derogation of the state at large, used or attempted to use his official position

to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest, and failed to avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest. Specifically, that Coffey interfered with a conservation officer's investigation of a Department of Fish and Wildlife Resources District Commission Member by prohibiting the officer from referring the matter to the appropriate prosecutorial entity. This was outside the established processes of government. Further, that Coffey interfered with the merit hiring process by instructing a Department of Fish and Wildlife Resources employee to rescind disqualification notices that were sent to twenty-two (22) applicants to "repay a favor." Finally, that Coffey interfered with the merit hiring process by instructing a Department of Fish and Wildlife Resources employee to re-interview an application who had already been recommended as "do not hire." This was outside the established processes of government.

3. The provisions of KRS Chapter 13B apply to all Commission administrative hearings. (KRS 11A.100(1)).

4. The Complainant had the burden of establishing by clear and convincing evidence that Rodney Coffey, by his Acts violated KRS 11A.020(1)(a), (b), and (d), and KRS 11A.020(2). KRS 11A.100(3). As stated by the Kentucky Supreme Court in *Fitch v. Burns*, 782 S.W. 2d 618, 622 (Ky. 1989):

"[W]here the 'burden of persuasion' requires proof by clear and convincing evidence, the concept relates more than anything else to an attitude or approach to weighing the evidence, rather than to a legal formula that can be precisely defined in words. Like 'proof beyond a reasonable doubt,' 'proof by clear and convincing evidence' is incapable of a definition any more detailed or precise than the words involved. It suffices to say that this approach requires the party with the burden of proof to produce evidence substantially more persuasive than a preponderance of evidence, but not beyond a reasonable doubt."

5. Respondent, Rodney Coffey, in his employment as the Colonel with the Kentucky Department of Fish and Wildlife Resources, was a "public servant" during the time of the events described herein. (KRS 11A.010(9)(h)). As such, he was required to abide by the Executive Branch Code of Ethics (hereafter, the "Ethics Code"). Any

allegation of a violation by him, of the Executive Branch Code of Ethics, subjected him to the jurisdiction of the Executive Branch Ethics Commission.

6. Pursuant to KRS 11A.100(3), upon a showing of clear and convincing evidence of violation of the Ethics Code, the Commission may:

“(a) Issue an order requiring the violator to cease and desist the violation; and

(b) issue an order requiring the violator to file any report, statement, or other information as required by this chapter; and

(c) In writing, publicly reprimand the violator for potential violations of the law and provide a copy of the reprimand to the alleged violator’s appointing authority, if any; and

(d) In writing, recommend to the violator’s appointing authority that the violator be removed or suspended from office or employment, and include a recommendation for length of suspension, to be approved by the appointing authority, if any; and

(e) Issue an order requiring the violator to pay a civil penalty of not more than five-thousand dollars (\$5,000) for each violation of this chapter.”

7. The Complainant has not established, by clear and convincing evidence, that Rodney Coffey violated KRS 11A.020(1)(a), (b), and (d), or 11A.020 as alleged in the Initiating Order during his employment as the Colonel of the law enforcement division of KWFWR.

8. As to the first charge, we find that the Complainant has not established by clear and convincing evidence that Colonel Coffey terminated the investigation into Commissioner Bevins for any improper or unethical reason. While the Commission has presented proof that Colonel Coffey may have been concerned that investigating or charging Commissioner Bevins would make it difficult for the Law Enforcement Division command staff to get the increased personnel and pay raises they were seeking, or might

have other political ramifications, we cannot conclude from the evidence presented that Colonel Coffey's decision was actually based upon this consideration. We do not find it improper or unusual that given the potential violator's position, that Colonel Coffey would be consulted about what to do, or even that he would make the decision as to whether to present it to a prosecutor. The fact that Colonel Coffey might think about, and potentially discuss with his Major, the political ramifications of investigating or charging the Chairman of the Commission with a crime, even though it should play no role in the ultimate decision, does not constitute an ethical violation. Considering the potential appearance of a conflict, the better course would have been for Colonel Coffey to present the case to the state prosecutor, and let the prosecutor make the determination as to whether to proceed with charges against Commissioner Bevins. That said, the question before this Commission is whether an improper consideration motivated Colonel Coffey's decision not to proceed, and this Commission does not believe such motivation has been established by clear and convincing evidence.

9. We are aware that at the Commission's last meeting in November, 2019, it entered a Final Order finding that Captain Skaggs violated KRS 11A.020(1) in a case arising from the same background as the first charge in this case against Colonel Coffey. We therefore feel compelled to point out the important, distinguishing facts between the two cases that render the rulings consistent. In the Captain Skaggs case, the Complainant demonstrated by clear and convincing evidence that in an effort to convince Officer Robinson to terminate his investigation, Captain Skaggs made false statements to Officer Robinson about neighbors of Commissioner Bevins being "pissed off" about hunters in the creek behind their house. We concluded that making false statements in an effort to



convince a subordinate to terminate an investigation would, in and of itself, be a violation of KRS 11A.020(1)(b). There is no evidence that Colonel Coffey engaged in similar behavior.

10. Moreover, when Captain Skaggs attempted to convince Officer Robinson to drop his investigation of Commissioner Bevins, Captain Skaggs was fully aware that he had previously advised Commissioner Bevins about the propriety (or impropriety) of spreading corn on or around his land, and that as such, his very own statements may be used as a defense to any potential charge. In other words, Captain Skaggs knew himself to be a probable (if not critical) fact witness to any resulting case against Commissioner Bevins, and that the propriety of his actions or advice might very well be questioned or challenged in that case. Accordingly, it was improper and unethical for him to use his authority over Officer Robinson to try to convince Officer Robinson to stop investigating the case in which Captain Skaggs was a fact witness. Colonel Coffey, on the other hand, was not a fact witness in a case against Commissioner Bevins, and therefore did not misuse his authority to try to terminate an investigation as Bevins did.

11. As to the second charge, we find that there is not clear and convincing evidence that Colonel Coffey used or attempted to use his position to secure or create privileges, advantages, or treatment for Rusty Gailor and candidates who had already been eliminated from the hiring process.

12. Specifically, there is not clear and convincing evidence that Colonel Coffey's actions regarding the recalled recruits were related to Rusty Gailor's call, or done for Rusty Gailor's benefit. While the timing suggests that such a relationship may exist, the mere timing here is not enough. Moreover, there is not clear and convincing evidence

that Colonel Coffey's recalling of the recruits is related to a desire by Colonel Coffey to secure pay raises and achieve other goals from Commissioner Gailor and his co-commissioners, or that Colonel Coffey felt that he "owed" something to Rusty Gailor. It is simply too much of a leap given the proof presented in this case.

13. Finally, we find that there is not clear and convincing evidence that Colonel Coffey used or attempted to use his position to secure or create privileges, advantages, or preferential treatment for Drew Swartz. The primary problem with this charge is that there does not appear to be an "established process of government" by which conservation officers are hired. The process here was not written, nor was the custom uniform and long-standing enough to find Colonel Coffey to have, or should have, known that he was violating an "established process of government" by suggesting that Swartz's background investigation be redone or get a second look.

#### **COMMISSION'S COMMENT ON HEARING OFFICER'S PROPOSED ORDER**

While the Commission reached the same result as the hearing officer in this case, it intentionally did not adopt the hearing officer's findings of fact and conclusions of law. As an initial matter, the Commission does not need, and therefore generally does not state, a "summary of the evidence" before stating its findings of fact. Moreover, the Commission finds that the hearing officer's proposed order overlooked and omitted references to numerous pieces of relevant evidence weighing against the hearing officer's conclusion. The Commission strives to set forth orders demonstrating that it has carefully considered all of the evidence in this case when coming to its decision. While the Commission does not doubt or question the hearing officer's fairness and careful consideration of all evidence, his proposed order—despite its length—does not adequately reflect consideration of Complainant's proof. The Commission realizes this case involved a long

hearing with many witnesses, and it wants to ensure the litigants know that the Commission considered all of the evidence presented in an unbiased manner, including all evidence specifically cited in the parties' exceptions and post-hearing briefs, before rendering this decision.

### **FINAL ORDER**

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Executive Branch Ethics Commission hereby DISMISSES the Initiating Order, with prejudice.

### **NOTICE OF APPEAL RIGHTS**

You have a right to appeal the Final Order of the agency pursuant to KRS 13B.140, which reads in part:

(1) All final orders of an agency shall be subject to a judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit court of the county in which the appealing party resides or operates a place of business. Copies of the Petition shall be served by the Petitioner upon the agency and all parties of record. The Petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The Petition shall be accompanied by a copy of the Final Order.

Pursuant to KRS 23A.010(4). "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Such courts have interpreted this language to mean that summons must be served upon filing an appeal in Circuit Court.

SO ORDERED, this 16<sup>th</sup> day of January 2020.

EXECUTIVE BRANCH ETHICS COMMISSION




Christopher Thacker, Chair



Christopher W. Brooker, Vice-Chair



April Wimberg, Member



Holly Iaccarino, Member



Kyle Winslow, Member

DISTRIBUTION

By hand delivery, for filing on January 16<sup>th</sup>, 2020:

Debbie Briscoe  
Administrative Proceedings Clerk  
EXECUTIVE BRANCH ETHICS COMMISSION  
Capital Complex East  
1025 Capital Center Drive, Suite 104  
Frankfort, Kentucky 40601

And

Michael W. Board  
General Counsel  
EXECUTIVE BRANCH ETHICS COMMISSION  
Capital Complex East  
1025 Capital Center Drive, Suite 104  
Frankfort, Kentucky 40601

By U.S. Mail to:

Steven G. Bolton  
213 St. Clair Street, Suite 213  
P.O. Box 502  
Frankfort, Kentucky 40602

E. Patrick Moores  
Hearing Officer  
P.O. Box 910765  
Lexington, Kentucky 40591

  
\_\_\_\_\_  
Debbie Briscoe